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In The

Supreme Court of the United States

OCTOBER TERM, 1966

No. 792

CITY OF MESA, a municipal corporation,

Petitioner,

v.

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, an Agricultural Improvement District,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

J. LaMar Shelley
City Attorney, City of Mesa
Mesa, Arizona

Mark Wilmer
Special Counsel
400 Security Building
Phoenix, Arizona 85004
Attorneys for Petitioner

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In The
Supreme Court of the United States

OCTOBER TERM, 1966

No. _____

CITY OF MESA, a municipal corporation,

Petitioner,

v.

SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT, an Agricultural Improvement District,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ARIZONA

Petitioner prays that a writ of certiorari issue to review the judgment and decision of the Arizona Supreme Court entered in the above entitled case July 1, 1966.

(Petitioner, City of Mesa, a municipal corporation, will be referred to herein as "City" and Salt River Project Agricultural Improvement and Power District, an Arizona Agricultural Improvement District, will be referred to as "District." "App....." will designate appendix pages. The initials "A.R." will designate the Abstract of Record.

CITATION TO OPINION BELOW

The Opinion of the Court below is reported as *City of Mesa v. Salt River Project Agr. Imp. & P. Dist.*, ... Ariz. ....., 416 P.2d 187 (1966). (App. A hereto).

JURISDICTION

The judgment and decision of the Arizona Supreme Court was rendered and entered July 1, 1966. Petitioner's Motion For Rehearing was timely filed July 15, 1966 and an Amended Motion For Rehearing was also timely filed under Arizona law September 7, 1966. Petitioner's Petition For Rehearing was denied September 20, 1966, and its Amended Motion on September 26, 1966.

The jurisdiction of this Court is invoked by reason of the provisions of 28 U.S.C. Sec. 1257(3).

QUESTIONS PRESENTED

Prefatory Note:

The basis, both as to fact and law, of the decision below is not clearcut. The District moved to dismiss the complaint upon the ground that the United States was an indispensable party, which motion the trial court denied. The United States then filed a "Representation of Interest" claiming essentially that the District as a "totality of facilities each integral to the operation of the other" was a reclamation project which was in fact owned by the United States either directly or through its agent, the District. The trial court, without taking any evidence, then dismissed the action upon the ground the United States was an indispensable party.

I. Whether the Reclamation Act of 1902 (32 Stat. 388) as amended and supplemented vests a continuing ownership in the United States in all property, movable or otherwise, acquired by a state-chartered corporation which has taken over the care, operation and maintenance of a reclamation project pursuant to contract with the Secretary of the Interior without regard to

the source of the funds used to acquire such property or the manner in which title has been vested.

II. Whether the limitations upon the doctrine of the sovereign immunity of the United States from suit stated by this Court in *Keifer & Keifer v. Reconstruction Finance Corporation*, 306 U.S. 381 (1939), applicable when asserted by or on behalf of a federally-chartered corporation are also applicable when this doctrine is asserted as insulating from suit a state-chartered quasi-municipal corporation with statutory authority "to sue and be sued," which quasi-municipal corporation serves or advances some federal interest and purpose and which makes use of some federally-owned property in conducting some of its business activities.

III. Whether the rule stated in *Land v. Dollar*, 330 U.S.731 (where title to property in suit is not admittedly in the United States and sovereign immunity is asserted as staying the action ownership becomes a question of fact) is also applicable when asserted by or upon behalf of a state-chartered quasi-municipal corporation in a suit involving its business property and it is alleged "that the defendant (such state corporation) is the sole owner of and the sole claimant to the property * * "

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The following constitutional and statutory provisions which are involved will be set forth verbatim in the Appendix:

Arizona Constitution, Article XIII, Sec. 5 (App. B1)

Sections 9-101, 9-231, 9-511, 9-514, 9-515 A, B, 9-516, 9-522 A, 9-523, 9-537 A.R.S. (App. B1-6)

Reclamation Act of 1902, Sections 4, 6, (32 Stat. 388) (App. B5-7)

Reclamation Extension Act of August 13, 1914, Section 5 (38 Stat. 687) (App. B7)

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Moratorium on Construction Charges, Section 8 (47 Stat. 75) (App. B11)

Phoenix Property Acquisition Act (72 Stat. 154) (App. B11-12)

Section 45-937 C, A.R.S. (App. B12)

STATEMENT OF THE CASE[1]

Petitioner, City of Mesa, (hereinafter "City") is a true municipal corporation organized under the general statutes of the State of Arizona (§§ 9-101, 9-231 A.R.S., App. B1-2). As such under the Constitution and statutes of Arizona it is authorized to engage in a public utility business. (Ariz. Const. Art. XIII, Sec. 5, §§ 9-511 et seq. A.R.S. App. B1-6).

Respondent, Salt River Project Agricultural Improvement and Power District (hereinafter "District") is a quasi-municipal corporation organized as such under Arizona statutes with statutory authority "to sue and be sued," (§ 45-937 C, A.R.S., App. B12) characterized by the Arizona Supreme Court as a business corporation and as a corporation engaged in an electric public utility business. *Local 266 International Brotherhood of Electrical Workers v. Salt River etc. Dist.*, 78 Ariz. 30, 275 P.2d 393 (1954); *City of Mesa v. Salt River Project Agricultural Imp. & P. Dist.*, 92 Ariz. 91, 97, 373 P.2d 722 (1962).

City has provided an electric utility service to its citizens since 1917. *City of Mesa,* supra. As Arizona has grown so has City. As its corporate limits have been expanded City has

[1]The rule "Whatever was matter of fact in the Court appealed from is matter of fact here," *Hanley v. Donoghue,* 116 U.S. 6 (1895); *Adams v. Saenger,* 303 U.S. 59 (1938) is relied upon by Petitioner since the Arizona Supreme Court, in its opinion, considers many matters generally known to Arizona residents but not formally made a part of the record. Petitioner's statement, however, insofar as matters outside the certified record are material, will be limited to matters of public record, matters recited in Court decisions and to facts published in the widely circulated Annual Report, 1965, of the respondent, Salt River Project.

expanded its electric plant in service to provide needed electric service and to secure needed municipal revenue. In so doing City came into competitive conflict with similar electric service offered by Respondent District. *City of Mesa v. Salt River Project*, 92 Ariz. 91, 373 P.2d 722 (1962).

The history and growth of District may be quickly sketched. Immediately following enactment of the "Reclamation Act" (32 Stat. 388) June 17, 1902, the Secretary of the Interior undertook the formation of a reclamation project incorporating the then irrigated farming areas around Phoenix, Arizona, which was to become generally known as the Salt River Project. An Arizona nonprofit but private corporation, Salt River Valley Water Users' Association, (hereinafter "Water Users") was formed under Arizona territorial statutes (§ 889, Revised Statutes of Arizona 1901) to serve as agent of the landowners who were to become part of and be served by the proposed project.

In 1904 the Secretary entered into a contract with the Water Users dated June 25, and proceeded with the development and construction of this proposed reclamation project. (A.R. Pocket Part).

In 1917 the Secretary turned over the care, operation and management of the facilities as then constructed to Water Users under a written contract (A.R. Pocket Part) under which it was agreed that the Water Users would (a) maintain the condition and capacity of these facilities as "the same is now" at "its own cost and without cost to the United States" but with the right to "construct additional works at its own cost without * * procuring the assent of the Secretary * * " (b) repay to the United States "the cost of the construction, and acquisition otherwise of said project promptly and without default" in the agreed sum of $10,279,190.98 as of January 1, 1917, plus adjustments, up or down, to date of actual turnover (December 1, 1917) by annual installments thereafter; and (c) "the Water Users * * from the time of the taking over of the care, opera-

tion and maintenance of said project thenceforward (shall) have and receive *to its own use and benefit* all the rents, issues, profits, revenue and income, *including all income from power and power privileges* growing out of or arising from the operation and maintenance of the project and every part thereof by it." (Emphasis added)

In 1936 the Arizona Legislature amended the statutes authorizing the formation of Agricultural Improvement Districts enlarging the powers and duties which such corporations might exercise and discharge. (Ch. 10, 12 Leg. Laws 1936, 1st Sp. Sess.).

Immediately thereafter the Water User lands were organized as an Agricultural Improvement District and the District in 1937 entered into a contract with the Water Users which was amended in 1944 and 1949, which contract and amendments were approved by the Secretary of the Interior. (A.R. Pocket Part)

Between 1917 and 1937 the Water Users had greatly expanded the project with the proceeds from sales of its bonds and had built large additional works both for storage of irrigation water and power generation. As is shown by this 1937 contract there was then outstanding $3,049,806.56 still owed the United States as the "Roosevelt Dam Balance." In addition the Water Users had a principal balance outstanding of $12,972,000 on various "Serial Gold Bonds," and owed the Reconstruction Finance Corporation $99,989.03 and an additional anticipated obligation of $6,000,000 as its cost of a new dam on the Verde River—a tributary of the Salt—and spillway improvements to other dams. In addition to the recitals in the 1937 agreement this expansion is reflected in *Orme v. Salt River Valley Water Users Ass'n,* 25 Ariz. 324, 217 Pac. 935 (1923); *Bethune v. Salt River Valley Water Users Ass'n,* 26 Ariz. 525, 227 Pac. 989 (1924); *Reichenberger v. Salt River Project etc.,* 50 Ariz. 144, 70 P.2d 452 (1937).

Under this 1937 contract the District undertook, as agent for

the Water Users, to discharge some of the obligations of the Water Users under its 1904 contract and 1917 contracts with the Secretary of the Interior and became the financing entity of the enterprise for bonding purposes.

This 1937 contract recognized that in 1903 Arizona law did not provide for public corporations or political subdivisions with the privileges and exemptions attendant upon such a status. It recited:

"Whereas, in order to secure for the lands of the Association the above mentioned powers, privileges, rights, exemptions and immunities, * * the Association lands had been organized as an Agricultural Improvement District."

The agreement then provided, by way of further stating its purpose:

" * * * and that the District shall become and be the holder and owner of all properties, real and personal or rights therein purchased, leased or otherwise acquired, necessary or useful to the purposes for which the Association and the District, or either of them, were organized, except such property or rights in property now held or hereafter taken in the name of the United States, and that the District, shall under the authority conferred upon it by Sections 3467 to 3514, inclusive, of the Revised Code of Arizona, 1928, as amended, finance and refinance as its own obligation, the indebtedness of the Association now existing or hereafter incurred by it in exercising the powers and performing the duties assumed by the Association under this Agreement."

The Association also agreed to pay over to the District annually all net revenues received by it and to guarantee all District bonds and other obligations.

In 1949 the District and the Association with approval of the Secretary modified their 1937 agreement, by which modification the District became an operating entity and by the mid 1950's had aggressively embarked upon a sales promotion program designed to build and develop the electric utility business. This

program has been successful. *Salt River Project 1965 Annual Report, p. 27.*

The electric public utility part of the District's business has become its main business. In 1960 (approximately) the District's bonded indebtedness had reached $55,000,000. *(City of Mesa,* supra). At year end 1964 its bonds outstanding amounted to $98,483,000 which bonded indebtedness at year end 1965 had increased to $110,191,000. In 1964 its operating revenues were $42,470,372, and in 1965, $43,552,894. In 1965 its operating revenues were derived $41,838,391 from sales of electric energy, a gain of $1,596,808 over 1964 but only $1,714,503 of said 1965 operating revenues was from "water and irrigation." It served 130,970 electric energy customers at year end 1965, a net gain of 5836 customers over 1964. Residential sales have almost doubled in the period 1960-1965. *Salt River Project 1965 Annual Report.*

In February, 1962, the District became interstate in character by entering into a power agreement with Colorado-Ute Electric Association, a Colorado corporation, to participate at least to the extent of $10,500,000 in construction of a coal-fired generating plant in northwestern Colorado. *Salt River Project 1965 Annual Report notes to combined Financial Statements Note 2, p. 36, Arthur Andersen & Co.; The Western Colorado Power Company v. The Public Utilities Commission of the State of Colorado,* .... Colo. ....., 411 P.2d 785 (1966). At year end 1965, the District had become one of a six member group of private and municipal utilities which were concluding plans for two generating units of 750,000 KW capacity in northwestern New Mexico to cost a total of $150,000,000. *Salt River Project 1965 Annual Report, pp. 12, 13.*

On December 17, 1962, the City Council of the City of Mesa pursuant to the authorization of §§9-511, 9-514, 9-515 A, B, 9-516, 9-522 A, 9-523, 9-537 A.R.S., (App. B1-6) directed the City Attorney to bring a condemnation action to acquire "the

portion of the plant, system and business of the defendant used and useful in rendering electrical utility service in the * * * area within the city limits of the City of Mesa * * * " (Petitioner's Complaint, A.R. 1, 2). The property to be condemned consisted of 11 services, some of them commercial, worth $6500 or in that neighborhood by city estimate and alleged in the complaint to be solely owned by the District. (A.R. 91, 1, 2).

THE FEDERAL QUESTIONS IN THE COURT BELOW

The District moved to dismiss Petitioner's complaint alleging, among other defenses, failure to join the United States, an indispensable party. The contracts of 1904, 1917, 1937 and the 1944 and 1949 amendments were made a part of this motion.

The motion was denied and the District answered the complaint. The United States then filed a "Representation of Interest" incorporating the contracts *supra* by reference and claiming that the District as a reclamation project was constructed and operated under authority of the Reclamation Act of 1902; that the District is made up of a "totality of the project facilities" and that all properties used by the District are owned by the United States and operated by the District as its agent (A.R. 39 et seq.), and that "because of its interest therein (the 11 services)" and in the "totality of the project facilities, the United States is an indispensable party to this action."

On the hearing of Petitioner's Motion to Dismiss this "Representation of Interest" the trial court, without taking any evidence, found the United States to be an indispensable party and dismissed the action.

On appeal to the Arizona Supreme Court Petitioner's Assignments of Error No. 1, 2 and 3, together with the argument in support thereof, were directed to the ruling of the trial court upon these federal questions. (Brief of Appellant, pp. 5, 6, 8-24).

The Brief of Appellee (Respondent) and the Brief of the

United States, Amicus Curiae, revolved almost entirely around the federal questions as did the Opinion and Decision of the Arizona Supreme Court. Petitioner's Amended Motion for Rehearing, filed after the decision of the Arizona Supreme Court, was devoted exclusively to the asserted erroneous conclusions of the Arizona Supreme Court upon these federal questions.

REASONS FOR GRANTING THE WRIT

Summary of Reasons

I. The decision in the Court below construing the Reclamation Act of 1902 (32 Stat. 388) as amended and supplemented, disregards and is at variance with:

1. The intent of Congress that the water users of reclamation projects promptly assume the care, operation and management of the facilities of each project as constructed and thereafter, subject to the obligation to repay the construction charges due to the United States, become substantially independent entities subject only to the requirement that the basic reclamation purpose of the project be respected and advanced. This congressional purpose is clear from (a) the actual language of the Reclamation Act of 1902 and (b) from legislative enactments subsequent thereto.

2. The administrative and judicial construction of the Reclamation Act and its amendments and supplements.

II. The decision of the Court below is in conflict with the guidelines laid down by this Court for determining the validity of the plea of the sovereign immunity of the United States as insulating a corporation, agent or agency serving or advancing some federal purpose from suit when asserted by or on behalf of such entity; and in consequence of disregarding these guidelines the Court below has in effect conferred upon a state-chartered quasi-municipal corporate entity which operates a vast electric public utility business privileges and immunities of the sovereign denied by Congress to "not less than forty" federally-chartered corporations "discharging governmental functions." *(Keifer & Keifer,*

supra, 306 U.S. 381, 391 n. 3); privileges and immunities which applied and extended within the logical limits of the Court's opinion, absent congressional action and control, may put it in many respects beyond all regulation or amenability to judicial process.

III. Because non-federal entities organized by authority granted at and below the state level are receiving increasingly large amounts of federal funds, by grant, loan or otherwise, in aid of an activity presently recognized by Congress as having some federal purpose, it has now become a matter of real and substantial public importance that this Court establish guidelines to be followed by the lower courts when the plea of soverign immunity from unconsented-to suit is asserted as staying the judicial process in litigation involving these state-authorized entities (or properties employed in the discharge of their assigned functions), federal or state.

SUMMARY ARGUMENT

Since the trial court, with the approval of the Arizona Supreme Court, refused to hear any evidence as to the actual title and ownership of the property, the subject of the action, and held the fact it was alleged to be property of an Agricultural Improvement District having the operation of a reclamation project as a function was sufficient to insulate it from suit under the sovereign immunity doctrine it follows that the courts below in fact held that all property of such a District is immune from legal process as property of the United States regardless of the source of funds used in its acquisition or manner in which title thereto was vested. It is but a short step to a holding that the corporation itself is immune from any interference and supervision by the Court.

It was sufficient for the Arizona courts that the project as conceived in 1904 was originally constructed pursuant to the authorization of the 1902 Reclamation Act and that the management of the project has continued under the supervision of the district.

CONGRESSIONAL INTENT AS EVIDENCED BY LEGISLATION

1. Section 4 of the Reclamation Act of 1902 (App. B5-6) as enacted directed the Secretary to estimate the cost of construction of a project and to levy an assessment or charge per acre sufficient to meet this cost "* * * with a view of returning to the reclamation fund the estimated cost of construction of the project." It is not reasonable to conclude that the Congress intended that the landowners were to repay the cost of the project to the Government and yet were not to become the owners thereof—at least as to the major part thereof.

2. By Section 6 (App. B6-7) it was directed that "when the payments required by this act are made by a major portion of the lands irrigated * * * the management and operation of such irrigation works shall pass to the owners of the lands irrigated thereby to be maintained *at their expense* * * * " The limitation was then imposed that *"title to* and the management and operation of *reservoirs* and *the works necessary for their protection* shall remain in the Government until otherwise provided by Congress." (Emphasis added.)

3. Section 5 of the Reclamation Extension Act of August 13, 1914, (38 Stat. 687, App. B7) granted the Secretary discretion to turn over the care, maintenance and operation of a project to a water users' group upon request without meeting the requirements of Section 6, *supra.*

4. Subsection G, Section 4 of the "Fact Finders Act," Act of December 5, 1964, Ch. 4, (43 Stat. 672, App. B7-8) required that when two thirds of the irrigable area of a project is covered by water rights contracts the project must be taken over by a water users' group if continued benefits are to be received by the project. (43 Stat. 702, 43 U.S.C. 500).

5. Subsection I of the "Fact Finders Act" (App. B8) provides that whenever water users take over the care, operation and management of a project all accumulated profits shall be credited to the construction charges and all net profits thereafter are to be

applied to (a) payment of construction charges (b) operation and maintenance costs and (c) *as the Water Users direct. "No distribution to individual water users shall be made out of any such profits before all obligations to the Government have been fully paid."* 43 Stat. 703, 43 U.S.C. 501. (Emphasis added.)

6. In 1954 Congress passed the "Title to Movable Property Act," July 29, 1954, (68 Stat. 580, App. B9) upon recommendation of the Department of the Interior and without objection from the Bureau of the Budget. This statute gave express authorization to the Secretary of the Interior to transfer title to project movable property to a water users' organization when it took over the care, management and operation of a reclamation project. Its purpose was to clarify the Secretary's authority. In addition, it authorized the Secretary prior to turnover to buy essential movable property for the purpose of conveying it when the project was turned over. The requirement is made that this property be purchased with funds advanced by the Water Users' organization or that it be the subject of an appropriate payment contract. See U. S. Code Congressional and Administrative News, 1954, Vol. 2, 83rd Congress, pages 2691, 2692, for legislative history.

7. In 1965, upon recommendation of the Department of the Interior, this same clarifying legislation was enacted (79 Stat. 172) extending the same express authority to the Secretary when a municipality became the operator of reclamation works to obtain a water supply.

The Report of the House Committee, Interior and Insular Affairs, No. 435, in recommending passage of the statute noted, in reference to the 1954 statute:

> "It (1954 statute) has also been beneficial to the organizations because, with title to the property, they have more flexibility in their operations and can take such actions as repair or replacement of the equipment at their discretion, *with their own funds."* (Emphasis added.) U.S. Code Congressional and Administrative News, Vol. 1, p. 1794 et seq. 89th Congress First Session.

The fact that this legislation relates only to the *current* turnover of reclamation projects demonstrates clearly that the problem does not, in the view of the Secretary and the Congress, exist as to old projects, since the movable property plainly is considered as owned by such projects since acquired by use of their own funds or repayment has been or will be made therefor to the Government. Hence transfer of title from the United States is not required.

ADMINISTRATIVE AND JUDICIAL CONSTRUCTION OF THE RECLAMATION ACT

A. The contract under which the Secretary of the Interior turned the care, operation and maintenance of the project property over to the Water Users in 1917 *pursuant to his interpretation of the Reclamation Act and his authority thereunder, provided,* inter alia: (App. C1-10).

1. The Water Users were to maintain the facilities turned over at its own cost and expense and without cost to the United States in the condition "the same is now."

2. The Water Users might construct additional works at its own cost without procuring the assent of the Secretary.

3. That from date of takeover "all rents, issues, profits, revenue and income, including all income from power and power privileges, growing out of or arising from the operation and maintenance of the project and every part thereof" should be received by the Water Users "for its own use and benefit."

Plainly the Secretary of the Interior, in 1917, read the Reclamation Act as authorizing the Secretary to cut adrift a reclamation project once it was organized and substantially constructed to thereafter fend for itself as an independent business entity subject to the obligation to repay construction charges to the United States and to operate the project in accordance with the purpose of the Act for which purpose the Secretary reserved certain visitorial and rule-making authority.

B. The Minidoka Reclamation Project is located in Idaho and

consists of two divisions, each a quasi-municipal corporation organized under Idaho law. The Minidoka dam across the Snake River was built in 1904. The Secretary turned the operation of one division over to the organized Water Users in 1917 and of the other division in 1926. Secretary Work, March 14, 1927, rendered a decision under the Act of December 5, 1924, 43 U.S.C.A., Sec. 501, dividing the power profits between the two divisions in which he said "as the matter now stands, to state it simply, the Burley District owns 95.16 percent of the power plant, and the Minidoka District the remainder or 4.4 percent." *Wilbur v. Burley Irrigation District,* 58 F.2d 871 (C.A. D.C., 1932). (In *Burley Irrigation District v. Ickes,* 116 F.2d 529 (C.A. D.C. 1940) the Court of Appeals limited this language to a vested right to receive and own a percentage of the profits rather than the plant itself but it did not limit the outright ownership of the state corporation to the profits as received).

C. In 1932 Congress enacted the Moratorium on Construction Charges for 1931 and 1932 (47 Stat. 75) by which relief was afforded water users from payment of certain construction charges. By Section 8 of this statute it was required that credits to the account of projects from power revenues must be offset against current charges before the deferment could be made effective. Power profits from works not constructed at the expense of the United States were excepted from this setoff provision. The Solicitor General, in response to a request from the Commissioner of the Bureau of Reclamation wrote an opinion under date of August 29, 1932, as to the application of this statute to Water Users' power revenues which makes it clear that power sales from plants erected by the Water Users after 1917 in the opinion of the Solicitor belong to the Water Users and not to the United States. *Federal Reclamation Laws Annotated,* U. S. Department of Interior, Bureau of Reclamation, Vol. 1, p. 418, Notes to Section 8.

D. In 1958 the United States required certain property in downtown Phoenix for the construction of a new federal office

building and Court House which was then owned by the District.

The United States and the District then plainly understood that the United States did not in fact own the property and did not regard the ownership of Respondent as that of a mere trustee, for by Public Law 437 in the 85th Congress 2nd Session (72 Stat. 154) the Congress provided for the purchase of this property from the District " * * * now owned by it * * * at its appraised value, by warranty deed * * * with documentary stamps thereto attached in amounts required by law."

E. In *Swigert v. Baker*, 229 U.S. 187 (1913), this Court in a brief review of the Reclamation Act recognized that the purpose of the Act was to establish a revolving fund to reclaim land for agriculture, provide for the repayment of the cost of the project facilities by the water users, turn the project over to the farmers as a "going concern" and proceed to the construction of another project using repayment funds for this purpose.

In both *Wilbur v. Burley Irrigation District*, 58 F.2d 871, (C.A.D.C. 1932) and *Burley Irrigation District v. Ickes*, 116 F.2d 529, (C.A.D.C. 1940) the Court of Appeals for the District of Columbia clearly construed the reclamation statutes as contemplating each water users' group, upon assuming the care, operation and maintenance of a reclamation project, as becoming the owner of most of its facilities and as an autonomous, self-governing local entity.

THE DECISION OF THE ARIZONA SUPREME COURT CONFLICTS WITH GUIDELINES OFT STATED BY THIS COURT

No extended review of the cases decided by this Court is warranted. These principles have been clearly established.

1. The government does not become the conduit of its immunity in suits against its agents or instrumentalities merely because they do its work.

2. Immunity from suit in the case of a governmental agency

is not presumed. Only Congress can confer this attribute of sovereignity and it must be clear that it has done so.

3. Extension of the doctrine of governmental immunity is not favored. Waivers of governmental immunity should be liberally construed.

4. When it is contended by a governmental agent or agency as a defense that property which does not admittedly belong to the sovereign is in fact owned by the sovereign and hence is immune from process this fact becomes a matter of proof as any other fact.

Sloan Shipyards Corp. v. United States Shipping Board, 258 U.S. 549 (1921)
Federal Land Bank v. Priddy, 295 U.S. 229 (1935)
Keifer & Keifer v. Reconstruction Finance Corp., 306 U.S. 381 1939)
Federal Housing Admr. v. Burr, 309 U.S. 242 (1940)
Reconstruction Finance Corp. v. Menihan Corp., 312 U.S. 81 (1941)
Land v. Dollar, 330 U.S. 731 (1947)
Malone v. Bowdoin, 369 U.S. 643 (1962)
Dugan v. Rank, 372 U.S. 609 (1963)

The decision below gives recognition to none of these guidelines.

While it may be argued the Arizona Court's decision is directed only to condemnation by one municipal corporation of certain property of another which administers a reclamation project, its sweep is by no means so narrow. The holding fairly construed, says that this Agricultural Improvement District is so fully and completely a federal agency that it is above state law and its property may not be interfered with by legal process.

Since the Federal Tort Claims Act is clearly inapplicable the question inevitably arises if the decision below stands as to just what remedy an injured plaintiff may have if badly injured by a District truck or by a carelessly dropped electric transmission line.

The question also arises in view of the broad and all-inclusive sweep of the Arizona Court's opinion if it is unreversed:

What restraints are available to the citizen and the rate payer through recourse to state courts or regulatory agencies to insure that this vast public utility business will be operated in the public interest?

PUBLIC IMPORTANCE OF THE QUESTIONS PRESENTED

The report of the Administrator, Rural Electrification Administration 1965, demonstrates that federal funds today furnish the financial lifeblood for an almost unlimited and perhaps almost unascertainable number of local and state entities. This report, Table 1, p. 26 shows the total number of electric borrowers in 1965 to be 1,104, with loans made in 1965 totaling $379,993,000 and with a cumulative total of loans of $5,631,752,196.

The Supreme Court of the State of Washington has determined by a 3-2 decision that property of an REA financed cooperative cannot be condemned because of the sovereign immunity of the United States from suit. *Public Utility District No. 1 etc. v. Inland Power & Light Co.*, 64 Wash.2d 122, 390 P.2d 690 (1964). The Supreme Court of Alaska in *City of Fairbanks v. Electric Distribution System*, ... Alaska ...., 413 P.2d 165 (1966), has reached the same conclusion but for somewhat different reasons. The United States District Court for the Western District of Louisiana in *Central Louisiana Electric Company, Inc. v. Rural Electrification Administration*, 236 Fed.Supp. 271 (1964) in a somewhat different legal and fact situation has rejected the plea of sovereign immunity as barring the suit.

Petitioner respectfully urges that this is an appropriate occasion in the public interest for this Court to furnish guidance to the lower courts, both federal and state, as to the appropriate guidelines in this related but in some respects new area of controversy involving federal law.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respecfully submitted,

J. LaMar Shelley
City Attorney, City of Mesa
Mesa, Arizona

Mark Wilmer
Special Counsel
400 Security Building
Phoenix, Arizona 85004
Attorneys for Petitioner

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